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Sent: Wed 3/12/2008 5:21:12 PM
Subject: Fw: March 27 Little Hoover commission testimony

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To: stuart.drown@lhc.ca.gov, mark.martin@lhc.ca.gov
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Date: 03/11/2008 01:08PM
cc: tdoduc@waterboards.ca.gov, drice@waterboards.ca.gov
Subject: March 27 Little Hoover commission testimony

11 March 2008

Stuart Drown
Executive Director
Little Hoover Commission
925 L Street, suite 805
Sacramento, CA 95814

Dear Mr. Drown, Chairman Hancock, and Commission members,
I am pleased to respond to your specific questions covering the roles of the State and Regional Water Quality Control Boards, and the challenges facing the Boards in responding to water quality/supply needs, including:

A. What are the State's most pressing water quality/supply issues?

California has particularly complex water infrastructure to meet myriad needs. We have an imperfect understanding of our overall water budget, even as we better understand surface water rights and a broad spectrum of surface water demands, but as yet, have no legislated program to manage groundwater. We try to restore complex ecosystems (such as the Sacramento/San Joaquin/Delta or Klamath River watersheds) by focusing primarily on surface water flows and pollution loadings. The Clean Water Act, and my testimony, focus solely on surface water quality, but the picture remains incomplete in lacking a comprehensive groundwater management program (rights, withdrawal, pollution and storage), for a fully integrated approach to water resources management.

From a surface-water view only, the most significant water quality issues revolve around balancing many competing uses with our existing supplies, many of which are already impaired. The uses, and water quality, are defined by the nine Regional Boards Basin Plans, which articulate the varied beneficial uses for which surface waters are to be protected. To look statewide, achieving these uses (such a full body contact recreation, or cold water fishery, for example) means we must make progress in addressing many stressors, such as salinity, protecting for drinking water uses, achieving clean coastal waters which meet the national pathogen criteria and reduce beach closure days (as So. California has

more beachgoer days than the rest of the country combined), restoring the depleted fisheries in coastal and inland rivers and streams, reducing urban and agricultural pollution loadings to rivers and streams, and many others. Our local land-use practices have an enormous impact upon water quality, including wetlands, coastal and stream protection. The types of pollutants and levels of impairment vary statewide. There are specific examples which are a particular priority in each Regional Board, as well as statewide.

B. Does the State have the governance structure to respond to current and future issues? What changes are needed?

We at EPA work with four Western States, over l00 Tribal governments, and various territorial governments in the Pacific. We note the differing structures under which California operates, with its many water and air boards at the regional level. It is more difficult to manage our programs with current, accurate information when we interact with nine Regional Boards and one State Board, as compared with one administrative department, but the logistical and coordination difficulties are offset by the overall strength of the California program. In my personal opinion, it would make no difference to tinker with the number of Regional Board appointees - whether 7 or 9, or something else, is of little consequence compared with the need to keep these positions filled with qualified persons. It is no doubt burdensome for these appointed individuals to serve with such little compensation when asked to address an ever-growing and controversial workload, spread over very long meeting days each month. The very question of Water Board governance structure becomes so controversial each time that it serves to mask the more valuable elements of support which the Boards could use; much is said of needed structural change but the Boards are no better off afterward as other needs remain unaddressed.

C. How does EPA measure the Boards' performance of Clean Water Act duties assigned by EPA?

We use several methods to measure performance, including:

- a Performance Partnership Agreement (which identifies our top mutual areas of focus over a five-year horizon);
- an annual workplan (which includes specific outputs in these top program areas);
- monthly meeting with senior Water Board managers to discuss performance and resolve program issues;
- semi-annual (midyear and end-of-year) meetings with all Regional Board executive officers to discuss performance and plan ahead;
- quarterly reporting to EPA nationally on various measures targeted to all States; and
- various program-specific evaluations of State performance (e.g. Jan. 2008 State Review Framework examined Clean Water Act compliance and enforcement, and the March 2005 Permitting for Environmental Results review examined NPDES permitting for each State's implementation of the Clean Water Act in detailed, quantifiable evaluations).

We are now poised to renew the Performance Partnership Agreement, and are working with the State and Regional Boards to add yet-greater specificity and Regional Board accountability to the Performance Partnership Agreement and annual workplan (which is the basis for federal funding of the water-quality programs). Please advise if Commission members or staff wish to receive the California State Review Framework or Permitting For Environmental Results documents by email (44 pp and 31pp, respectively).

D. What are the Boards' strengths and weaknesses?

California is noted for its capability and expertise in implementing the Clean Water Act programs, which derive in part from a strong Porter-Cologne Act, other specific legislation which brings California to the forefront, and the quality of the staff and managers who carry out these programs. These strengths are described in some detail in our various program-specific evaluations, some of which I reference above. For example, the Boards have cultivated a "culture of compliance" statewide - they have a comprehensive compliance presence through inspections and follow-up actions. There are ways to better capture the collective efforts now under consideration by the State Board; for example, although all Regional Boards' enforcement actions are predominantly Migden penalty actions, it is hard to determine common enforcement priorities statewide.

One area we at USEPA are very focused on is driving the upgrade of wastewater infrastructure throughout California. With the support of the So. California Regional Boards, we have significant multi-billion-dollar

infrastructure commitments in Los Angeles, Orange County, and San Diego under federally enforceable consent decrees. The value of those three agreements alone exceeds $4 billion in injunctive relief. While these represent the larger systems, we are also focusing attention on mid-sized sewage collection systems, with the purpose of significantly reducing spills, and requiring collection system repair, renewal and reinvestment. This is something we could all be doing statewide to protect these community assets, manage infrastructure for the long-term, and protect surface waters from sewage and other flows.

The Boards have many other strengths, including a substantial improvement in the content and quality of water-quality based NPDES permits, and in the adoption of Total Maximum Daily Loads, which may be the most significant catalysts for water-quality improvement. Over 760 TMDLs have been adopted and EPA-approved over the past decade, and are now being implemented primarily through wastewater and stormwater NPDES discharge permits. Although a complex technical and legal endeavor, these are being carried out in an examplary way, though with very limited staffing. The Boards have taken innovative approaches to solving many water-quality problems, including, for example, addressing pollution from irrigated lands. This is unmatched elsewhere in the country, and being carried out with very limited staffing.

The Boards' strengths are consistent from year to year, but are particularly vulnerable to budget cycles where staffing in a given program is reduced one year and restored some time later, only to be reduced again. For example, EPA tracks at the national and State level the percentage of expired discharge permits. I closely track these monthly in each Regional Board. As I prepare this testimony, I note that 78% of the NPDES wastewater permits for major facilities, 82% of the NPDES wastewater facilities for minor permits, and 39% of the Phase I stormwater permits (known as "phase one MS4" permits) are current. EPA expects each State to maintain 90 - 95% of all permits current at any given time, which can be difficult to achieve when Federal and State funding has not increased. The ability to meet all Federal commitments has a great deal to do with the level of staff which is trained and retained from one year to the next. I've experienced these fluctuations in the State's water-quality program since l99l, and understand the situation is yet more severe in the water-rights program, with which I have no experience.

D. Lessons California can learn from other states?

Although I don't have particular expertise in this area, it seems California has rather complex, lengthy processes for hiring staff, promoting staff to management, letting contracts, processing grants, and an unfortunate situation in which some technical staff are better compensated than managers. The difficulty in promoting and compensating managers inadvertently suggests that the most difficult jobs in the Water Boards are not properly valued as human capital - who would choose to become a manager if they could remain better compensated as staff? If we are to build strong capabilities to address our present and future challenges, I urge the Commission to pursue these issues with more detailed and accurate information from experts. Lastly, California, like other western states, very much limits out-of-state travel for its Board staff and managers. As a result, we rarely have benefit of California's program expertise at key national meetings. I think this is worth reconsidering.

California has struggled to develop and operate a satisfactory data management system which meets Federal requirements and State needs. This has been the focus of recent State Board efforts, with assistance from EPA and others. There is a continuing need to effectively manage water-quality program activities and outcomes for permitting, discharge monitoring, inspections, compliance status, and enforcement actions. The State has invested federal grant funds in maintaining the federal NPDES data system (PCS). As a result, California's data in PCS is of higher quality than ever before, with very reliable data regarding NPDES permittees as compared with the corresponding state system (CIWQS). Later this year, PCS data will migrate to a modernized federal system (known as ICIS-NPDES), which among other improvements, can accomodate direct electronic reporting by dischargers. As many aspects of the State's data management needs go beyond the federal program, we will continue to collaborate on the development of cost-effective approaches for meeting both Federal and State data management needs. I understand the State and Regional Boards operate without a specific information technology/data management line-item in their budget - this may be an important area to address if we are going to make sustained progress in this critical area.

E. How does California compare with other states in water quality and compliance?

Under the Clean Water Act, over the past 30 years, each State has developed its own water quality standards and surface water monitoring program. Given this approach, it is very difficult to compare water quality from one state to another when the measurement of what is considered impaired differs with each unique standard and pollutant. There are issues common to many states, e.g. setting a protective temperature standard in rivers and streams, or nutrient standards; in both of these areas, California has made progress. California is in the process of adopting a statewide standard for mercury in fish tissue, has adopted TMDLs for very challenging legacy pollutants, such as mercury and PCB, and is very focused on addressing its most difficult water-quality problems. Many states have limited staffing to establish or update water-quality standards, and California is no exception.

In terms of compliance, California has a strong presence in the NPDES wastewater discharge program through permitting, inspection and compliance actions. As noted in our review of the enforcement program (the State Review Framework), California has a very high level of compliance. Inspection coverage (85% of majors, 23% of minors, 80% of pretreatment programs, and 9% of stormwater permittees) exceeds national averages, and largely meets EPA targets. Inspection reports are thorough, and completed punctually with good follow-through. A key compliance measure nationally known as "significant noncompliance" is much lower in California than the national average (l0% versus 19%), and we work with the State and Regional Boards to take prompt action against facilities in violation. The State and Regional Boards rely on EPA and our contractors to supplement the Clean Water Act program in the areas of stormwater, pretreatment and biosolids compliance, as California no longer retains the expertise it once had in the pretreatment program and did not apply for delegation of the biosolids program. We operate congenially with shared priorities, but this is not the ideal situation. EPA has but three pretreatment staff and one biosolids staff for all Western states, so if the budget allowed, I'd very much like to rebuild over the next several years California's ability to manage the pretreatment program, and to consider adoption of the biosolids program.

F. How can the boards improve consistency, timeliness, and transparency in key functions (basin planning, TMDLs, permits)?

In basin planning/water quality standards, the State and Regional Boards lack adequate staffing to maintain the level of updating requested by dischargers, citizen groups, and other stakeholders. The menu of possible Basin Plan updates is extensive, although some common elements can be pursued for Statewide benefit (such as the ongoing successful effort to adopt a mercury standard for fish tissue).

California has a uniquely complex TMDL development and adoption process, preparing three documents (a TMDL, its implementation plan, and a Basin Plan amendment) in adopting a TMDL, where other states adopt solely the "technical" TMDL document. While more complex, it also leads to more timely and vigorous implementation of TMDLs through permitting and other mechanisms.

In TMDLs and permitting, there are opportunities for greater consistency in technical approach, format and content, which can lead to greater resource efficiencies, but these possibilities sometimes run contrary to Regional Board members desire to tailor specific TMDLs and permits to respond to stakeholder comments. The State Board has taken the lead in proposing a Statewide compliance schedule policy, which will provide welcome consistency and supplant the varied Regional Board compliance schedule policies. We are pursuing other areas which lend themselves to greater consistency, in NPDES permitting content, and in addressing new challenges such as the low-impact development and hydromodification components of the stormwater permits.

In closing, I hope these comments will be helpful to Commission members and staff. I very much look forward to the March 27 hearing. Should you have questions or comments, please email (strauss.alexis@epa.gov) or call me (415 972 3572).

Sincerely yours,

Alexis Strauss
Director, Water Division